

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

LEN STOLER, INC. d/b/a LEN STOLER)	
AUDI,)	
)	
Plaintiff/Counter-Defendant,)	
)	Case No. 1:15CV1659-TSE/JFA
v.)	
)	
VOLKSWAGEN GROUP OF AMERICA, INC.)	
d/b/a AUDI OF AMERICA, INC.,)	
)	
Defendant/Counter-Plaintiff.)	

DEFENDANT’S MEMORANDUM
IN SUPPORT OF MOTION TO FILE UNDER SEAL

Defendant Volkswagen Group of America, Inc. d/b/a Audi of America, Inc. (“AoA”) submits this memorandum in support of its motion pursuant to Local Rule 5 to file under seal certain papers submitted in connection with its Response to Stoler’s Supplemental Statement of Material Facts That Should Be Disputed (Dkt. No. 81). The Response contains partial redactions and one exhibit is redacted entirely.

1. The Response addresses the Supplemental Statement of Material Facts That Should Be Disputed, filed by Stoler. The material redacted from this Response filed by AoA reflects the redactions made by Stoler in its filing. The nature of the materials redacted from this Response is described in Stoler’s Memorandum of Law In Support of Plaintiff’s Motion for Leave To File Certain Limited Information Under Seal with Redacted Copies For the Public Record (Dkt. No. 62). The filing of these materials under seal was approved and ordered by this Court on October 11, 2016 (Dkt. No. 84).

2. AoA also seeks approval of its redaction of Exhibit 7 attached to the Response. The material redacted from Exhibit 7 consists of an excerpt of the deposition of Reinhard Fischer. This testimony includes sensitive information about the commercial relationship between AoA and its dealers, including details concerning AoA's dealer incentives. This information is not generally known to the public. Its disclosure would harm the competitive position of AoA and AoA's dealers.

3. Although judicial proceedings are generally open to the public, and the public has a right of access to judicial records and documents, *Va. Dept. of State Police v. Wash. Post*, 386 F3d 567 (4th Cir 2004), this right is not unlimited. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978). In the present circumstances, this interest is outweighed by the potential injury to the party whose information would be revealed because its disclosure to the public would unfairly and unnecessarily harm the competitive business interests of that party. *See id.* at 598 (recognizing "sources of business that might harm a litigant's competitive standing" as a situation where public access to judicial records may be denied).

4. The proposed redactions and sealings are limited and are appropriate, as the risk of injury to the affected party is greater in this instance than the public's common law and First Amendment right of access. Its disclosure would give an unfair advantage to the party's competitors in the marketplace because it would reveal sensitive information about the operations and internal business practices of the parties, both Stoler and AoA. This justifies allowing the documents containing this information to be filed under seal. *See East West LLC v. Rahman*, 2012 WL 384 1401 (E.D.Va.).

Dated: October 12, 2016

Respectfully submitted,

/s/Richard Mark Dare
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2016, I served a true and accurate copy of the foregoing by filing it electronically with the Clerk of the Court using CM/ECF system, which will send a notification of such filing (NEF) to the following:

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